

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of SBC Communications Inc. (SBC) and AT&T Corp. (AT&T) for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.

Application 05-02-027  
(Filed February 28, 2005)

**ASSIGNED COMMISSIONER'S RULING  
PROVIDING SCOPING MEMO**

**I. Introduction**

Pursuant to Rule 6(a)(3) and 6.3 of the Commission's Rules of Practice and Procedure, this ruling confirms the category for this proceeding, and also provides the scoping memo confirming the issues and schedule pursuant to the prehearing conference (PHC) held on April 20, 2005.

Application (A.) 05-02-027 was filed on February 28, 2005 by SBC Communications, Inc. (SBC) and AT&T Corp. (AT&T) (collectively, Applicants). The applicants seek authorization to transfer control of AT&T Communications of California, TCG Los Angeles, Inc. TCG San Diego, and TCG San Francisco from subsidiaries of AT&T to subsidiaries of the combined organization that will result from AT&T's planned merger with SBC.

## **II. Categorization of the Proceeding**

On March 16, 2005, an Assigned Commissioner's Ruling (ACR) was issued. The ACR established the preliminary categorization of the proceeding as ratesetting and designated the principal hearing officer.

In the ACR dated March 16, 2005, I preliminarily categorized this proceeding as "Ratesetting," as defined in Rule 5(c) of the Commission's Rules of Practice and Procedure. I hereby confirm the categorization as "Ratesetting." This ruling is appealable only as to category of this proceeding under the procedures in Rule 6.4.

## **III. Ex Parte Rules**

The Commission's ex parte rules applicable to this proceeding are set forth in Rules 7(c) and 7.1. These ex parte rules apply to all parties of record and, more broadly, to all persons with an interest in any substantive matter. The category of individuals subject to our ex parte rules is defined in § 1701.1(c)(4).

## **IV. Scoping Memo**

The scope of this proceeding is governed by Pub. Util. Code § 854. Pursuant to § 854(a), no person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from this Commission. The Commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities that are subject to this section of the statute.

Applicants' position is that pursuant to § 854(a), the primary issue to be determined in this proceeding is whether the proposed transaction would be adverse to the public interest. Applicants argue, however, that § 854(b) does not apply to this proceeding. Moreover, applicants believe that pursuant to its

authority under § 853(b), the Commission should exempt this proceeding from the requirements of § 854(c). The Applicants thus propose that the Commission limit its review of the proposed transaction accordingly.

Protests to the application were filed by a variety of parties, either opposing the application, or asking that mitigating conditions be required in the event that the Commission approves the application. Protestants contend that the proposed transaction, at least in the form proposed by the applicants, would be detrimental to the public interest, and raise disputed facts requiring evidentiary hearings.

Protestants also disagree concerning the applicability of 854(b) and exemption under § 854(c). Protestants argue that § 854(b) does apply, and should be required as being within the scope of the proceeding. Moreover, protestants argue that the Commission should not exempt the transaction from the requirements of § 854(c).

For purposes of going forward with this proceeding, parties shall continue to follow the procedure prescribed in my ACR dated March 16, 2005. In that ACR, I directed Applicants to supplement the application to provide all the information they believe necessary and appropriate to demonstrate compliance with all of the provisions of Pub. Util. Code §§ 854(b) and (c) to the extent that they had not already done so in the original application. As previously noted, I made that ruling not to determine the applicability of the statute, but in the interest of ensuring that any potential disagreement over the statute's applicability not be cause for delay in processing the application.

Thus, without prejudging the substantive merits as to the applicability of §§ 854(b) and (c), I hereby direct that the scope of the proceeding shall incorporate the requirements of §§ 854(b) and (c). I reiterate that this ruling does

not make any substantive determination on the statutes' applicability. A determination on the substantive merits of whether these statutory provisions apply will be made in the future.

Sections 854(b) and (c) set forth specific requirements that a qualifying transaction must satisfy to warrant Commission approval. Under § 854(b), the Commission is to equitably allocate the economic benefits of the transaction between ratepayers and shareholders. Also, with assistance from the Attorney General, the statute calls for the Commission to consider any potential anti-competitive effects.<sup>1</sup> In the schedule below, an advisory opinion is requested from the State of California Attorney General regarding whether competition will be adversely affected and if so, what mitigation measures could be adopted to avoid this result.

Section 854(c) further requires the Commission to evaluate the transaction according to specific criteria.<sup>2</sup> The statute prescribes that Applicants have the

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<sup>1</sup> Pub. Util. Code § 854, subd. (b) requires that a transaction:

- (1) Provides short-term and long-term economic benefits to ratepayers.
- (2) Equitably allocates, where the commission has ratemaking authority, the total short-term and long-term forecasted economic benefits, as determined by the commission, of the proposed merger, acquisition, or control, between shareholders and ratepayers. Ratepayers shall receive not less than 50% of those benefits.
- (3) Not adversely affect competition. In making this finding, the commission shall request an advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result.

<sup>2</sup> Subdivision (c) requires the Commission to consider eight factors, as follows:

- (1) The financial condition of the resulting public utility doing business in the state.
- (2) The quality of management of the resulting public utility doing business in the state.

*Footnote continued on next page*

burden of proving, by a preponderance of evidence, that subdivisions (b) and (c) have been satisfied. (Pub. Util. Code, § 854, subd. (c).)

## **V. Evidentiary Hearings**

Parties disagree as to whether evidentiary hearings are necessary for developing the record for this application. Based upon hearing parties' arguments and in view of the protests that have been filed, I hereby grant the request for evidentiary hearings as set forth in the procedural schedule adopted below. The evidentiary hearings shall address the full scope of issues, as defined above in Section IV. A second PHC shall be scheduled for August 5, 2005, to address witness scheduling, and any further procedural details, as warranted.

## **VI. Public Participation Hearings**

I hereby direct that public participation hearings be scheduled in this application, as early as practical, to provide an opportunity for members of the public to appear and be heard with respect to the pending application. At the PHC, the applicants were directed to provide further information concerning the time required to prepare and mail advance notices of the public participation hearings to customers. A separate ruling shall be issued shortly, providing the

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- (3) The quality of management of the resulting public doing business in the state.
  - (4) Fairness to affected public utility employees, including both union and nonunion employees.
  - (5) Fairness to the majority of all affected public utility shareholders.
  - (6) Benefits on an overall basis to state and local economies, and to be communities in the area served by the resulting public utility.
  - (7) The preservation of jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state.
  - (8) Mitigation measures to prevent significant adverse consequences which may result.

specific times, locations, and any other pertinent information relating to the schedule for the public participation hearings.

## **VII. Procedural Schedule**

The schedule below is adopted for the service of testimony, evidentiary hearings, briefs, and related matters required to decide this application. At the PHC, applicants were directed to file a response to protests on April 29, 2005. The remainder of the procedural schedule is adopted as set forth below.

Applicants Serve Opening Testimony	May 13, 2005
Intervenors Serve Reply Testimony	June 17, 2005
Concurrent Rebuttal testimony	July 15, 2005
Attorney General's Statement on Competition	July 29, 2005
Second Prehearing Conference	August 5, 2005 Commission Courtroom State Office Building 505 Van Ness Avenue San Francisco, CA 94102
Evidentiary Hearings	August 15 – 26, 2005
Opening Briefs	September 23, 2005
Reply Briefs	October 14, 2005
Administrative Law Judge's Proposed Decision	November 15, 2005
Final Commission Decision	December 15, 2005

## **VIII. Discovery Matters**

As discussed at the PHC, in the event, or to the extent, that parties are not able to resolve any disputes over discovery on a reasonably prompt basis, they shall bring the dispute before the Commission without delay in the form of a motion to compel. Any such motion shall identify specifically the nature of any dispute, with justification for the production of any discovery materials. If

parties cannot reach agreement on the appropriate terms of a nondisclosure agreement for information claimed to be confidential, parties shall bring such disputes to the Commission through a motion to compel production of discovery. Parties shall promptly comply with Commission rulings resolving discovery disputes.

At the PHC, a proposal was made for creation of a centralized web site where multiple parties' discovery requests and related responses could be posted for the common use of all parties. The feasibility of implementing such a process is still under consideration and will be addressed further in a separate ruling.

**IT IS RULED** that:

1. This ruling confirms the categorization of this proceeding as ratesetting, as defined in Rule 5(c) of the Commission's Rules of Practice and Procedure.
2. A second prehearing conference shall be held in this proceeding on August 5, 2005, at 9:30 a.m., and evidentiary hearings shall be held in this proceeding, starting on August 15, 2005, at 9:30 a.m. in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California 94102.
3. The ex parte rules as set forth in Rule 7(c) and 7.1 shall apply to this proceeding.
4. The scope of this proceeding is described in Section IV above, and the schedule is hereby adopted as set forth in Section VII.
5. Public participation hearings shall be held in this proceeding, with the specific notification of times and places to be provided in a separate ruling.
6. An advisory opinion is hereby requested from the Attorney General, to be provided on July 29, 2005, regarding whether competition will be adversely

affected and if so, what mitigation measures could be adopted to avoid this result.

7. The official service list, as established at the PHC, is attached to this ruling. The rules for electronic service as set forth in Rule 2.3.1 shall apply to this proceeding.

8. In the event, or to the extent, that parties are not able to resolve any disputes over discovery on a reasonably prompt basis, they shall bring the dispute before the Commission without delay in the form of a motion to compel.

9. A separate ruling shall further address the question of whether, or by what means, a common web site may be established as a clearinghouse for posting discovery that has been propounded or provided.

Dated April 26, 2005, at San Francisco, California.

/s/ Michael R. Peevey  
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Michael R. Peevey  
Assigned Commissioner



**APPENDIX**  
**(List of Appearances)**

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Last updated on 25-APR-2005 by: SMJ

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**(END OF APPENDIX)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner's Ruling Providing Scoping Memo on all parties of record in this proceeding or their attorneys of record.

Dated April 26, 2005, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.